FILED
OCT 25 1920
JAMES D. MAHER,
CLERK.

In the Supreme Court
OF THE
United States

OCTOBER TERM 1920

No. 5[redacted]160

PACIFIC MAIL STEAMSHIP COMPANY,
Petitioner,

vs.

J. LUCAS,
Respondent.

PETITION AND NOTICE OF MOTION FOR WRIT OF CERTIORARI

to the United States Circuit Court of Appeals for the Ninth Circuit.

CHARLES J. HEGGERTY,
KNIGHT & HEGGERTY,
Crocker Building, San Francisco,
Proctors for Petitioner.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1920

No. ———

PACIFIC MAIL STEAMSHIP COMPANY,
Petitioner,

vs.

J. LUCAS,
Respondent.

PETITION AND NOTICE OF MOTION FOR WRIT OF CERTIORARI

to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Edward Douglass White, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The *Pacific Mail Steamship Company* respectfully petitions and represents to the Court that the

suit in *admiralty* of J. Lucas, libelant, against the Pacific Mail Steamship Company, respondent, lately decided by the Circuit Court of Appeals for the Ninth Circuit, *affirming* a final decree of the District Court of the United States for the Northern District of California, Southern Division, awarding libelant $219, with interest and costs, for *seaman's wages, maintenance and cure* against petitioner, and denying a rehearing, is a suit in admiralty in which the judgment of the Circuit Court of Appeals is made final by the provisions of the Judicial Code; and your petitioner applies to this Honorable Court to require by certiorari or otherwise, said case to be certified to the Supreme Court of the United States for its review and determination.

Reported: Pacific Mail Steamship Company v. Lucas, 264 Federal 938.

Summary of Statement.

February 18, 1919, the libelant signed shipping articles at San Francisco as water tender on petitioner's steamer "Venezuela" for a round voyage to Hongkong, China, and other ports in the Orient and return to San Francisco for final discharge, such voyage ending April 25, 1919; in his *libel* he alleged that he fell sick on the voyage and was sent to the United States Marine Hospital at Honolulu, the "Venezuela" continued on her voyage, leaving him on shore at said hospital.

Petitioner *answered* this libel, among other defenses alleging that libelant pretended to be ill and unable to make the voyage, and insisted on going ashore to the Marine Hospital, Honolulu; that the ship's doctor advised him to make the voyage, lay off work, and be treated by him on the vessel when he would be all right in a few days; that libelant refused to remain on the vessel and be treated by the ship's doctor and cared for and maintained in the ship's hospital, insisted upon being paid and was paid his wages in full to that time before the United States shipping commissioner, signed and executed with the master in the presence of the shipping commissioner and attested by the commissioner the *mutual release* required and provided for by section 4552, Revised Statutes.

The steamer "Venezuela" carried *passengers* and cargo and, as required by law under severe penalty, carried a competent *physician* and fully equipped and constantly maintained *hospital* spaces and equipment for the treatment and care of passengers and seamen falling sick during the voyage (Trans. p 84), all of which libelant knew (Trans. p. 43-44); and there was no question made in the case by libelant, his proctor or the Court as to the competency of the ship's doctor or the sufficiency of the ship's hospital equipment.

Before the vessel arrived at Honolulu, libelant visited the ship's doctor several times complaining that he was sick, the doctor observed no indications whatever of illness, but prescribed for him accord-

ing to the symptoms libelant described (Trans. pp. 84, 85); libelant kept on working, did not lay off and the day before the steamer arrived at Honolulu again visited the ship's doctor, told him he felt no better, that he did not want to continue the voyage and that he wanted to leave the ship and go ashore at Honolulu if he then felt no better (Trans. pp. 43, 44, 45); the doctor urged and advised him to remain on the vessel and continue the voyage, to lay off work, that he would treat him on the vessel, and that he would be all right in a few days (Trans. pp. 43, 44); libelant refused to remain on the vessel and be there treated by the ship's doctor, and insisted that he be paid his wages and go ashore at Honolulu, and asked for the master's certificate of service on the "Venezuela" to entitle him to enter the Marine Hospital at Honolulu; he kept constantly at work while on the vessel and at no time was unable to work up to the moment he left the vessel and went ashore, and at no time even claimed to be sick enough to quit work or unfit him to perform the services for which he shipped while on the vessel. He testified:

> "I was working all the time on the ship. The doctor told me the day before we got in he would fix me up and to make the trip; I told him if I did not feel any better than I do now I don't think I will be able to go any farther than Honolulu. He told me to stay on the ship, he would treat me and I would be all right in a little while. I knew they had regular hospital spaces and equipment there for anybody that was ill, and that I could have been treated

aboard the ship (Trans. pp. 43, 44). I did not want to make the round trip on the 'Venezuela' " (Trans. p. 45).

The steamer arrived at Honolulu February 25, 1919; libelant then asked to be paid his wages, refused to remain on the vessel to continue the voyage or be treated by the ship's doctor in the ship's hospital, and insisted on going, and did go, ashore at Honolulu; thereby putting it out of his power to perform and depriving the vessel of his services for the *two months* remaining of the voyage.

Thereupon, the libelant and the master went with the shipping articles before the United States shipping commissioner, and in the presence of the shipping commissioner he was paid his *wages in full* to that time, and with the master signed and executed the *mutual release* in the commissioner's official records, as provided and required by section 4552, Revised Statutes (Section 8341, U. S. Comp. Stat. 1916), the commissioner attested the same under his seal and signature, and the commissioner also *certified* on the shipping articles the *discharge* of libelant (Trans. p. 26).

The libelant testified: "I am an old sea dog" (Trans. p. 56); there is no claim *in the libel,* and he made no claim or suggestion, nor was there any evidence of fraud or coercion or overreaching in the execution of this mutual release, or that he had not been paid his wages in full to that time. He said, "I signed for my wages in the shipping commissioner's book (Trans. pp. 45, 46). I know what the form of

discharge is, but I did not sign a discharge. I signed for my wages" (Trans. p. 47).

Libelant also testified:

> "I went to the Marine Hospital, and the doctor there said 'I can't receive you here without a receipt from the skipper of the ship' " (Trans. p. 49); "I went back to the ship, and the captain gave it to me" (Trans. p. 37).
>
> "*After I got my discharge* I went straight to the hospital, and remained there two nights and a day" (Trans. p. 39).
>
> "*They put me out of the hospital* because the *doctor* thought there was *nothing wrong with me*" (Trans. p. 39).
>
> "Q. Now you say the doctor at the Marine Hospital turned you out of the hospital because he said there was nothing the matter with you?
>
> "A. Yes, Dr. Hooper said the *only thing I wanted was fresh air.* He said: '*That is all you need*' " (Trans. p. 48).
>
> The ship's doctor also testified: "I did not observe that he was sick," etc. (Trans., pp. 84, 85).

Libelant's evidence will be found (Trans. pp. 33 to 59) and the evidence of the ship's doctor (Trans. pp. 83 to 89).

Two months later—April 25, 1919—when the "Venezuela" returned to San Francisco, the libelant filed his libel against petitioner for wages, maintenance and cure from his discharge at Honolulu February 25, 1919, to the end of the voyage, April 25, 1919; the District Court granted a decree in accordance with his libel; petitioner appealed and the

Circuit Court of Appeals affirmed the decree, and denied a rehearing on September 7, 1920 (Trans. p. 126).

Importance of the Two Questions Involved.

The final decision by the Supreme Court of the *two* legal propositions involved in this application for certiorari is necessary for the following reasons:

1. This Court has never passed upon the *first* question, and the decision of the Circuit Court of Appeals is at variance with the well considered and constantly followed decision of *Justice Holmes* (Rosenberg v. Doe, 146 Massachusetts 191; 15 N. E. 510), at variance with its own prior decisions, and with the decisions of the other Federal Courts of the land, and is obviously erroneous;

2. The Circuit Court of Appeals did *not* decide, but absolutely *ignored* the *second* question, which was expressly made a defense in petitioner's answer to the libel and sustained by evidence on the hearing; the Supreme Court has never decided this question, and the decision of the Circuit Court of Appeals ignoring this defense is manifestly erroneous, and contrary to the correct legal conclusion, illustrated by *Judge Hough* (The Bonker No. 2, 241 Fed. 831, 835, and the Santa Barbara, 263 Fed. 369); and

3. The final decision by the Supreme Court of the *second* legal proposition involved in this case is of the utmost particular importance to the interests

and safety of passengers and cargo and the operation of American shipping across the Pacific Ocean out of the port of San Francisco, making Honolulu, Hawaii, a port of call, and American shipping coastwise between Atlantic and Pacific ports of call; and the final decision by the Supreme Court of the *first* legal proposition involved herein is of the utmost general importance to the protection of owners and vessels engaged in the American coastwise, foreign and domestic commerce on the sea; because, if seamen have the legal right to assert illness, leave the vessel and go ashore for treatment, refuse to remain on board and be there treated and cared for during the voyage by a competent ship's doctor, in fully equipped and constantly maintained ship's hospitals required by the law under severe penalty and constantly maintained at large expense to the owners, and thereby deprive the vessel of the seaman's services when able to work, as in this case during the two months remaining of the voyage, and then compel the vessel to pay such seaman wages, maintenance and care to the end of the voyage, a great and expensive burden will be imposed upon such American shipping, and also the safety of both passengers, cargo and vessel will be necessarily imperilled through undermanned steamers during the remainder of such voyage; and if seamen who demand their wages and insist on leaving the vessel at ports of call, on pretense of illness, and who are paid their wages in full, before a United States shipping commissioner, and sign and execute with

the master, without fraud, coercion or overreaching, before and attested by such commissioner, the "mutual release" provided for and required by section 4552, Revised Statutes, and which mutual releases are prepared by the government and contained in its official records, and can then be allowed to libel and recover for wages, maintenance and care to the end of the voyage, after refusing to receive all these aboard the vessel, a great and unjust burden and expense is thereby laid upon American shipping.

I.

General Reasons Relied on for Allowance of Writ of Certiorari.

The decision of the Circuit Court of Appeals is *contrary* to the provisions of section 4552, Revised Statutes; and is *contrary* to the well considered and constantly followed decision of *Justice Holmes* (Rosenberg v. Doe, 146 Massachusetts 191, 15 N. E. 510), a suit for *seaman's wages;* and *contrary* to their own decision (Petterson v. Empire Transp. Co., 111 Federal 931, 937), an admiralty case in which the same Circuit Court of Appeals expressly *quote* Justice Holmes' decision, thus:

> "In that case the Court had under consideration the provisions of section 4552 of the Revised Statutes, and of it said: 'We are of opinion that the statute means to make the release conclusive, if it be executed and attested as required, without fraud or coercion'."

And *contrary* to the *two* decisions of *Judge De Haven* (the Pennsylvania, 98 Federal 744, and Domenico v. Alaska P. Assn., 112 Federal 554, 560), both admiralty cases based upon and citing Justice Holmes' decision, holding the release conclusive in the absence of fraud, coercion, overreaching or underpayment, both at the common law and under section 4552, R. S.; and *contrary* to the decision of Judge Ogden Hoffman (Raymond v. the Ella S. Taylor, 40 Federal 902), where the master also gave the seaman a certificate of service on the vessel to entitle him to enter the United States marine hospital.

The Circuit Court of Appeals in the case at bar, held that the mutual release under section 4552, R. S., duly executed by the seaman and the master before and duly attested by the United States shipping commissioner, in the absence not only of any evidence, but in the absence of any suggestion in the libel or any claim by the seaman or his proctors of any fraud, coercion or overreaching, where the wages were paid in full, was not conclusive, where the seaman testified he was "an old sea dog" and knew what a discharge was, had insisted on leaving the ship and being paid his wages; because as that Court said, the case at bar was an *admiralty* case, the release was not read or explained to him, he thought he was only signing for his wages and the *deposition* of the shipping commissioner had not been taken; and after *quoting* Justice Holmes' decision in Rosenberg v. Doe, *supra*, cast it aside as a *common law*

decision, overlooking the fact that Justice Holmes was enforcing in a comomn law court a ***maritime*** cause and applying the maritime law, under the *reservation* in the Judiciary Act (quoted: Sec. 24, Judicial Code) to the seaman of "a common law *remedy* where the common law was competent to give it"; the Circuit Court of Appeals absolutely *ignored* its own previous decisions, and cited and quoted various early admiralty decisions made on settlements between master and seaman, all decided under the old admiralty rule years before the office of United States Shipping commissioner was created expressly for the purpose of guarding and protecting seamen against improvident and questionable settlements with masters, and years before the enactment of section 4552, Revised Statutes, expressly enacted to avoid all such questions and by its terms declaring that the effect of the mutual release in that section provided for and required, in all settlements should be:

> "2. Such release, so signed and attested, *shall* operate as a mutual discharge and settlement of all demands *for wages* between the parties therto, on account of wages, in respect of the past voyage or engagement; and
>
> "4. In cases in which discharge and settlement before a Shipping Commissioner are required, *no payment*, receipt, settlement or discharge *otherwise* made *shall operate* as evidence of the *release or satisfaction* of any claim."

Section 4552, Revised Statutes (Sec. 8341, U. S. Comp. Stats. 1916), provides:

"The following rules *shall* be observed with respect to the *settlement of wages:*

"1. Upon the *completion*, before a shipping commissioner, *of any discharge and settlement*, the master or owner *and* each seaman respectively, in the *presence* of the shipping commissioner, *shall sign a mutual release of all claims for wages* in respect of the past voyage or engagement, and the shipping *commissioner shall sign and attest it*, and shall retain it *in a book* to be kept for that purpose, provided *both* the master *and* seaman *assent* to such settlement, or the settlement has been adjusted by the shipping commissioner.

"2. *Such release*, so signed and attested, *shall operate as a mutual discharge and settlement of all* demands for *wages* between the parties thereto, *on account of wages*, in respect of the past voyage or engagement.

"3. *A copy of such release*, certified under the hand and seal of such shipping commissioner to be a true copy, shall be given by him to any party thereto requiring the same, and such copy *shall* be receivable in evidence upon any future question touching such claims, and shall have all the effect of the original of which it purports to be a copy.

"4. In cases in which discharge and settlement before a shipping commissioner are required, *no* payment, receipt, settlement, or discharge *otherwise* made *shall operate* as evidence of the *release or satisfaction* of any claim.

"5. Upon payment being made by a master before a shipping commissioner, the shipping commissioner shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall, between the master and his employer, be received as evidence that he has made the payments therein mentioned."

Justice Holmes' decision in Rosenberg v. Doe, 146 Massachusetts, 191, 15 N. E. 510, (omitting the element in that case that the Seaman was a Finnish sailor who spoke the English language very imperfectly), is, we respectfully maintain, absolutely conclusive of the case at bar; and that decision has been constantly followed by all Courts since, and by the Circuit Court of Appeals for the Ninth Circuit in all of its decisions *prior* to the decision in this case.

II.

Because the steamer "Venezuela" was a *Passenger* Steamer required by the Revised Statutes of the United States, under penalty, to and it did carry a competent *physician* and fully equipped hospital spaces and equipment to treat and care for passengers and seamen falling sick during the voyage, and was entitled to retain libelant on board for care and treatment as a sick seaman by its ship's doctor and in its ship's hospital, and have his services on the vessel when he recovered; that it was the duty of libelant to remain on the vessel and be so there treated and cared for, and to perform the services for which he shipped when able to do so; that libelant refused to remain on the vessel and be there treated and cared for by its ship's doctor in the ship's hospital, that he insisted that his wages be paid and they were paid to him in full to that time, and requested a Certificate of

Service to entitle him to enter the Marine Hospital at Honolulu, and that he thereby deprived the vessel of his future services to which it was entitled when he was able to work; and that libelant thereby forfeited all right thereafter to wages, maintenance and cure from the vessel as a sick seaman, violated his shipping articles, and ceased thereafter to be a sick seaman for whose wages, maintenance and cure to the end of the voyage the vessel was liable, that when he refused to continue the voyage and remain on the vessel and accept and receive from the vessel there, that maintenance, cure and the wages petitioner was willing, offered and wished to give him, that he could not thereafter recover from petitioner for his maintenance and cure elsewhere and wages to the end of the voyage.

The Bouker No. 2, 241 Federal 831, 835;
The Santa Barbara, 263, Federal 369;
The Ella S. Taylor, 40 Federal 902.

The Circuit Court of Appeals *did not decide* but absolutely ignored this defense, expressly pleaded in Petitioner's *Answer* to the Libel. (Tran. p. 9).

Passenger ships are required by law, under severe penalties, to carry a competent doctor and constantly maintain fully equipped *Hospital* spaces to treat and care for passengers and seamen falling sick during the voyage.

The Iroquois, 194 U. S. 240;
24 Ruling Case Law, Sec. 388, 1287.

The case at bar establishes that had the libelant remained on the "Venezuela" he would have been competently treated and cared for, his wages paid, and petitioner would have had his services when he was able to perform them. He cannot refuse to accept the medical and hospital treatment and care on the ship, provided for at great expense, leave the vessel, deprive petitioner of the services for which he shipped, and then recover wages, maintenance and cure to the end of the voyage, as a seaman falling sick during the voyage.

Wherefore: Your petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the Seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court to certify and send to the Supreme Court of the United States, for its review and determination, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in said case therein, entitled: "Pacific Mail Steamship Company, Appellant v. J. Lucas, Appellee, Number 3425," pursuant to Section 240 of the Judicial Code, and that said judgment of said Circuit Court of Appeals in said case, and every part thereof, may be reversed by this Honorable Court, and your petitioner will ever pray, etc.

Dated, San Francisco,
October 16, 1920.

CHARLES J. HEGGERTY,
KNIGHT & HEGGERTY,
Proctors for Petitioner.

State of California,
City and County of San Francisco.—ss.

Charles J. Heggerty, of lawful age, being first duly sworn, deposes and says: That he is one of the proctors for Pacific Mail Steamship Company, the petitioner named in the foregoing petition; that he prepared the foregoing petition and that the allegations thereof are true, as he verily believes.

CHARLES J. HEGGERTY.

Subscribed and sworn to before me this 16th day of October, 1920.

(Notarial Seal) EUGENE P. JONES,
Notary Public in and for the City and County of San Francisco, State of California.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1920

No.

PACIFIC MAIL STEAMSHIP COMPANY
Petitioner,

vs.

J. LUCAS,
Respondent.

NOTICE OF MOTION FOR WRIT OF CERTIORARI.

To the Respondent in the above-entitled petition, and to Albert Michelson, Esq., and Herbert Chamberlin, Esq., Proctors for Respondent:

Please take notice that on Monday, the 15th day of November, 1920, at the opening of the Court on that day, or as soon thereafter as counsel may be heard, Pacific Mail Steamship Company, petitioner herein, will submit its foregoing verified petition for a Writ of Certiorari to the Supreme Court

of the United States, in its court room at the Capitol, at the City of Washington, District of Columbia.

Dated, San Francisco,
October 16, 1920.

CHARLES J. HEGGERTY,
KNIGHT & HEGGERTY,
Proctors for Petitioner.